2382.

SUPREME COURT OF THE UNITED STATES.

No. 185.

THE UNITED STATES, PLAINTIFFS,

VS.

PETER MARIGOLD.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

UTITED STATES OF AMERICA,
Northern district of New York, ss:

At a circuit court of the United States, begun and held at Albany, for the northern district of New York, in the second circuit, on the third Tuesday of October, in the year of our Lord one thousand eight hundred and forty-eight, and in the seventy-third year of American independence.

Present, the honorable Samuel Nelson and Alfred Conkling, esq'rs.

THE UNITED STATES OF AMERICA
vs.
PETER MARIGOLD.

State of the pleadings.

This is an indictment against the defendant, charging him under the 20th section of the act of Congress, entitled "An act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes," approved March 3, 1825.

1st. With having brought into the United States, from a foreign place, with intent to pass, utter, publish, and sell as true, certain false, forged, and counterfeit coins, made, forged, and counterfeited in the resemblance and similitude of certain gold and silver coins of the United States, coined at the mint, he knowing the same to be false, forged, and counterfeit, and intending thereby to defraud divers persons unknown.

J. & G. S. Gideon, printers

2d. With having uttered, published, and passed such counterfeit coins, with intent to defraud, &c.

To this indictment the defendant demurs, and George W. Clinton, attorney of the United States for the said district, who prosecutes in this behalf, joins in demurrer.

This cause coming on to be argued at this term, the following questions occurred:

First. Whether Congress, under and by the Constitution, had power and authority to enact so much of the said 20th section of the said act, as relates to bringing into the United States counterfeit coins.

Second. Whether Congress, under and by virtue of the Constitution, had power to enact so much of the said 20th section as relates to uttering, publishing, passing, and selling of the counterfeit coins therein specified.

On which said several questions the opinions of the judges were opposed.

Whereupon, on motion of the said attorney, prosecuting for the United States in this behalf, that the points on which the disagreement has happened, may, during the term, be stated under the direction of the judges, and certified under the seal of the court, to the Supreme Court to be finally decided.

It is ordered, that the foregoing state of the pleadings and statement of the points upon which the disagreement has happened, which is made under the direction of the judges, be certified, according to the request of the attorney, prosecuting as aforesaid, and the law in that case made and provided.

UNITED STATES OF AMERICA,
Northern district of New York.

I, Anson Little, clerk of the circuit court of the United States, for the northern district of New York, in the second circuit, do hereby certify the forgoing to be a correct copy from the minutes.

Given under my hand and seal of office, at Albany, in said district, this twenty-fifth day of October, in the year of our Lord one thousand eight hundred and forty-eight.

[L. S.]

ANSON LITTLE, *Clerk*.

Filed 4th December, 1848.

2383.

SUPREME COURT OF THE UNITED STATES.

No. 195.

JOSEPH FORSYTH, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF FLORIDA.

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J. & G. S. Gideon, Printers.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judge of the United States district court of the northern district of the State of Florida, greeting:

Because in the records and proceeding, and also in the rendition of the judgment of a plea which [is] in the said district court before you, between the United States and Joseph Forsyth, a manifest error hath happened, to the great damage of the said Joseph Forsyth, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the day of next, in the said Supreme Court to be then and there held, that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this twenty-first day of March, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the United States the seventy-second.

C. N. JORDAN, Clerk.

[L. S.] *Clerk of the United States district court of the northern district of Florida.*

The execution of this writ appears by the schedule hereto annexed.

C. N. JORDAN, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the United States district court for the northern district *court* of Florida, wherein Joseph Forsyth is plaintiff, and you are defendant in error, to shew cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Isaac H. Bronson, judge of the United States district court for the northern district of Florida, this 23d day of March, in the year of our Lord one thousand eight hundred and forty-eight.

I. H. BRONSON,

Judge of the district court of the U. S. for northern district of Florida.

Executed by delivering a copy of the within citation to C. C. Yonge, United States district attorney for the northern district [of] Florida.
Arcadia, March 23d, 1848.

ROBERT MYERS,
Marshal nor. dist. Fla.

SUPREME COURT OF THE UNITED STATES.

JOSEPH FORSYTH
vs.
THE UNITED STATES.

Indictment for cutting timber on lands of the United States.

Know all men by these presents, that we, Joseph Forsyth, Ezekiel E. Simpson, and John Hunt, are held and firmly bound unto the above named United States, in the sum of five hundred dollars, to be paid to the said United States; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, our and each of our executors and administrators, firmly by these presents. Sealed with our seals, and dated this 22d day of March, 1848.

Whereas the above named Joseph Forsyth hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the United States district court for the northern district of Florida: Now, therefore, the condition of this obligation is such, that if the above named Joseph Forsyth shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JOSEPH FORSYTH, [L. S.]
E. E. SIMPSON, [L. S.]
JNO. HUNT. [L. S.]

Sealed and delivered in presence of—
BENJAMIN D. WRIGHT,
I. H. BRONSON, witness to signature of Simpson.

I approve of the foregoing bond, and of the sureties thereon.

I. H. BRONSON,
United States dist. judge, &c., &c.

Pleas in the district court of the United States for the northern district of Florida, before the honorable Isaac H. Bronson, judge of said court, at the city of Pensacola in said district, at the March term of said court, in the year of our Lord eighteen hundred and forty-eight.

Be it remembered, that heretofore, to wit, on the third day of October, in the year of our Lord eighteen hundred and forty-five, at a special term of the late superior court of the district of West Florida, in the late territory of Florida, begun and held as a district court of the United States for the said district of Florida on the third day of October, in the county of Escambia in said district, a grand jury was duly drawn and summoned, empannelled, and sworn, to inquire in and for the body of

the said district of West Florida, consisting of the following persons, to wit: M. Crupper, foreman, M. Sawyer, F. Lavellette, R. Bourman, John Wilkins, M. D. Hernandez, J. Hernandez, S. Milstead, F. de La Rua, W. Medlock, J. Osburn, W. H. Baker, E. S. Jones, J. Castro, J. E. Caro, Felix Bonifay, Henry Becker, William Waters, C. Lopes, F. T. Commyns, F. Mauro, P. Palmis, J. C. Julian.

And afterwards, to wit, on the third day of November, at the same term of said court, the said grand jury came into court and presented the following bill of indictment against Joseph Forsyth, endorsed "a true bill;" which was then and there filed in said court, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA
vs.
JOSEPH FORSYTH.

Cutting timber on the lands of the United States. October special term, 1845.

DISTRICT OF WEST FLORIDA.

The grand jury of and for the United States of America, empannelled and sworn to inquire in and for the body of the district of West Florida, upon their oaths present, that Joseph Forsyth, late of the district aforesaid, gentleman, on the first day of November, in the year of our Lord eighteen hundred and forty-three, and on divers other days and times between that day and the day of finding of this inquisition, with force and arms, at township number two, in range number twenty-eight, in the county of Santa Rosa, in the district aforesaid, did cut and fell certain timber trees on lands of the United States there situate, to wit, five thousand pine timber trees of the value of one dollar each, then and there standing, and being on the lands of the United States aforesaid; the said lands being then and there other lands than lands which, in pursuance of any law passed, had before that time been reserved or purchased for the use of the United States, for the supplying or furnishing therefrom timber for the navy of the United States, with intent to dispose of the same in a manner other than for the use of the navy of the United States, to the great damage of the said United States, contrary to the force of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Forsyth afterwards, to wit, on the day and year aforesaid, and on other days and times aforesaid, with force and arms in the district aforesaid, at township number *two* aforesaid, in range number twenty-eight, in the district and county aforesaid, did cause and procure to be cut and felled certain other timber trees, on certain other lands of the United States there situate, to wit, five thousand pine trees of the value of one dollar each, then and there standing and being on the lands of the United States; the said lands being then and there other lands than lands which, pursuant to any law passed, had before that time been reserved or purchased for the use of the United

States, for the supplying or furnishing therefrom timber for the navy of the United States, with intent to dispose of the same in a manner other than for the use of the United States, to the great damage of the said United States, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

C. C. YONGE,
U. S attorney for West Florida.

Endorsed—A true bill.
(Signed) M. CRUPPER, *Foreman.*

And afterwards, to wit, on the fourth day of November, in the superior court aforesaid, the following proceedings were had, and entries made, to wit:

UNITED STATES
vs.
JOSEPH FORSYTH. } Indictment.

Cutting timber on the lands of the United States.

On motion of district attorney, it is ordered that capias be issued.

Whereupon the same was issued, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of West Florida, Escambia county.

To the marshal of West Florida, greeting:

We command you that you take Joseph Forsyth, if to be found in your bailiwick, and him safely keep, so that you have his body forthwith before the honorable the judge of our said court, for the district and county aforesaid, at the court house in the city of Pensacola, to answer the United States of an indictment for cutting timber on the lands of the United States. Hereof fail not under the pain of the law, and have you then and there this writ.

Witness the honorable Dillon Jordan, judge of our said court, at the court house aforesaid, this the fourth day of November, eighteen hundred and forty-five.

C. N. JORDAN, *Clerk.*

On which capias the following return was made: Executed the fifth day of November, eighteen hundred and forty-five, by taking into custody Joseph Forsyth.

E. DORR, *U. S. marshal.*

The prisoner arrested by virtue of this capias, was taken out of custody by a writ of habeas corpus emanating from the circuit court of the State of Florida, Santa Rosa county, November term, eighteen hundred and forty-five.

EBIN DORR, *U. S. marshal.*

And afterwards, to wit, on the fourth day of February, eighteen hundred and forty-eight, came C. C. Yonge, United States attorney, and sued out an alias capias, in the words and figures following, to wit:

the said district of West Florida, consisting of the following persons, to wit: M. Crupper, foreman, M. Sawyer, F. Lavellette, R. Bourman, John Wilkins, M. D. Hernandez, J. Hernandez, S. Milstead, F. de La Rua, W. Medlock, J. Osburn, W. H. Baker, E. S. Jones, J. Castro, J. E. Caro, Felix Bonifay, Henry Becker, William Waters, C. Lopes, F. T. Commyns, F. Mauro, P. Palmis, J. C. Julian.

And afterwards, to wit, on the third day of November, at the same term of said court, the said grand jury came into court and presented the following bill of indictment against Joseph Forsyth, endorsed "a true bill;" which was then and there filed in said court, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA
vs.
JOSEPH FORSYTH.

Cutting timber on the lands of the United States. October special term, 1845.

DISTRICT OF WEST FLORIDA.

The grand jury of and for the United States of America, empannelled and sworn to inquire in and for the body of the district of West Florida, upon their oaths present, that Joseph Forsyth, late of the district aforesaid, gentleman, on the first day of November, in the year of our Lord eighteen hundred and forty-three, and on divers other days and times between that day and the day of finding of this inquisition, with force and arms, at township number two, in range number twenty-eight, in the county of Santa Rosa, in the district aforesaid, did cut and fell certain timber trees on lands of the United States there situate, to wit, five thousand pine timber trees of the value of one dollar each, then and there standing, and being on the lands of the United States aforesaid; the said lands being then and there other lands than lands which, in pursuance of any law passed, had before that time been reserved or purchased for the use of the United States, for the supplying or furnishing therefrom timber for the navy of the United States, with intent to dispose of the same in a manner other than for the use of the navy of the United States, to the great damage of the said United States, contrary to the force of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Forsyth afterwards, to wit, on the day and year aforesaid, and on other days and times aforesaid, with force and arms in the district aforesaid, at township number *two* aforesaid, in range number twenty-eight, in the district and county aforesaid, did cause and procure to be cut and felled certain other timber trees, on certain other lands of the United States there situate, to wit, five thousand pine trees of the value of one dollar each, then and there standing and being on the lands of the United States; the said lands being then and there other lands than lands which, pursuant to any law passed, had before that time been reserved or purchased for the use of the United

States, for the supplying or furnishing therefrom timber for the navy of the United States, with intent to dispose of the same in a manner other than for the use of the United States, to the great damage of the said United States, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

C. C. YONGE,
U. S attorney for West Florida.

Endorsed—A true bill.
(Signed) M. CRUPPER, *Foreman.*

And afterwards, to wit, on the fourth day of November, in the superior court aforesaid, the following proceedings were had, and entries made, to wit:

UNITED STATES
vs.
JOSEPH FORSYTH. } Indictment.

Cutting timber on the lands of the United States.

On motion of district attorney, it is ordered that capias be issued.

Whereupon the same was issued, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of West Florida, Escambia county.

To the marshal of West Florida, greeting:

We command you that you take Joseph Forsyth, if to be found in your bailiwick, and him safely keep, so that you have his body forthwith before the honorable the judge of our said court, for the district and county aforesaid, at the court house in the city of Pensacola, to answer the United States of an indictment for cutting timber on the lands of the United States. Hereof fail not under the pain of the law, and have you then and there this writ.

Witness the honorable Dillon Jordan, judge of our said court, at the court house aforesaid, this the fourth day of November, eighteen hundred and forty-five.

C. N. JORDAN, *Clerk.*

On which capias the following return was made: Executed the fifth day of November, eighteen hundred and forty-five, by taking into custody Joseph Forsyth.

E. DORR, *U. S. marshal.*

The prisoner arrested by virtue of this capias, was taken out of custody by a writ of habeas corpus emanating from the circuit court of the State of Florida, Santa Rosa county, November term, eighteen hundred and forty-five.

EBIN DORR, *U. S. marshal.*

And afterwards, to wit, on the fourth day of February, eighteen hundred and forty-eight, came C. C. Yonge, United States attorney, and sued out an alias capias, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Florida, Escambia county.

To the marshal of the United States for the northern district of Florida:

We command you that you take the body of Joseph Forsyth, if to be found in your district, and him safely keep, so that you have his body before the honorable the judge of the United States district court, held for the northern district of Florida, at the court house in the city of Pensacola, on the first Monday in March next, to answer an indictment for cutting timber on the lands of the United States. Herein fail not under pain of the law, and have you then and there this writ.

Witness honorable Isaac H. Bronson, judge of the United States for the northern district of Florida, at the court house aforesaid, this the fourth day of February, eighteen hundred and forty-eight, and independence of the United States the seventy-second.

C. N. JORDAN, *Clerk.*

C. C. YONGE, *U. S. attorney.*

On which the following return was made, to wit: Came to hand February the 7th, eighteen hundred and forty-eight; executed on the twenty-second day of February, by taking into custody the body of Joseph Forsyth.

R. MYERS, *U. S. M. N. D. F.*
By F. T. COMMYNS, *Deputy.*

And afterwards, to wit, on the sixth day of March, in the present March term of the district court of the United States for the northern district of Florida, held at Pensacola as aforesaid, came the parties aforesaid; and the said cause, and the records and proceedings thereof having been transferred to this court by virtue of the act of Congress, entitled "An act to regulate the exercise of the appellate jurisdiction of the Supreme Court of the United States in certain cases, and for other purposes," approved twenty-second February, eighteen hundred and forty-seven; and the said indictment and other papers therein having been filed in this court, the said cause is thereupon docketed in this court.

And afterwards, to wit, on the seventeenth day of March, in this same term of March, the following proceedings were had, and entries made, to wit:

And thereupon the following rule, and the return thereon, was filed in this cause.

At a district court of the United States for the northern district of Florida, held at Tallahassee in said district, January the fifteenth, eighteen hundred and forty-eight—

Present, the honorable Isaac H. Bronson, judge.

UNITED STATES
vs.
JOSEPH FORSYTH.

Cutting timber on the lands of the United States.

It having been suggested by C. C. Yonge, esq., attorney for the United States, that this cause, which was pending in the late superior court of the western district of Florida, in and for the county of Escambia, has been transferred to this court in pursuance of the act of Congress on the twenty-second day of February, eighteen hundred and forty-seven, and that the pleadings and papers, and the record of the proceedings therein, have been filed with the clerk of this court at Pensacola.

And on motion of said C. C. Yonge, esq., on behalf of the United States, it is ordered that this cause be docketed in this court, and that the same stand for trial at the next term of this court, to be holden in the city of Pensacola on the first Monday of March next; *at* that it be placed upon the trial docket accordingly.

And it is further ordered, that a certified copy of this rule be served without delay upon the defendant above named, in order that he may have notice of the transfer of said cause, and that the same has been placed upon the trial docket, to be tried at the next term of this court.

I, R. B. Smith, clerk of said court, do hereby certify, that the foregoing is a true copy from the records of this court. In witness whereof I have hereto set my hand, and affixed the seal of the said court, this the eighteenth day of January, eighteen hundred and forty-eight, at Tallahassee, in the northern district of Florida.

R. B. SMITH, *Clerk*.

Which said order, having been delivered to the marshal of the said district, was duly returned and filed in said district court, with a return endorsed by him thereon, in the words and figures following, to wit:

Came to hand seventh day of February, eighteen hundred and forty-eight; executed by leaving a copy with the defendant the twenty-second day of February, eighteen hundred and forty-eight.

R. MYERS, *Marshal*.
By F. T. COMMYNS, *Deputy*.

Saturday, March the eighteenth, eighteen hundred and forty-eight; court met according to adjournment.

Present, honorable Isaac H. Bronson, judge.

UNITED STATES
vs.
JOSEPH FORSYTH.

Indictment—cutting timber on the lands of the United States.

Joseph Forsyth, who stands indicted for cutting timber on the lands of the United States, was led to the bar, &c., and thereupon arraigned and pleaded not guilty to the charge in the indictment.

And thereupon came a jury, to wit: W. M. Richburg, John B. Griffin, Peter Souchett, Antonio Collins, M. Crupper, Martin Sawyer, T. J. Gardiner, Sebastian Caro, F. M. Moura, George Vanloon, Henry Johnson, H. A. Bright; who were duly chosen, tried, and sworn, to try the issues joined in the cause. And the following witnesses were sworn and gave evidence on the part of the United States, to wit: W. B. Gains, Benjamin Thompson, William Mitchell, Thomas Mitchell, Wyatt Franklin, E. Farrand. Whereupon the jury, after hearing the proofs and the arguments for the respective parties, and the charge of the court thereon, returned the following verdict, to wit: We the jury upon our oaths do say, we find the defendant guilty, and assess the value of the trees cut by him at sixty-one dollars.

Friday, the seventeenth March, eighteen hundred and forty-eight.

UNITED STATES
vs.
JOSEPH FORSYTH.

Indictment—cutting timber on the lands of the United States.

A motion having been submitted on a previous day of this term, by Messrs. Wright & Jordan, of counsel for the defendant, to stay all further proceedings, and to quash the indictment in this case, on the ground, to wit, that the indictment was found in the late superior court of the district of West Florida, by a grand jury empannelled and sworn in said court at the May term thereof, in the year of our Lord one thousand eight hundred and forty-five, being after the admission of the State of Florida into the Union; and that, therefore, the said court, or grand jury thereof, had no jurisdiction to find said indictment. And, second, that the act of Congress of eighteen hundred and thirty-one, under which this indictment was found, only prohibits the cutting of timber on reserved lands; and that no indictment can be maintained under it for cutting pine timber on other lands, except those reserved for the use of the navy. And the argument of the said counsel of the defendant, as well as of the district attorney of the United States, having been heard, and due deliberation being thereupon had, it is ordered, that the aforesaid points be overruled, and that the said motion be denied.

Saturday, March the eighteenth, eighteen hundred and forty-eight.

UNITED STATES
vs.
JOSEPH FORSYTH.

Indictment No. 1, found at the October term, eighteen hundred and forty-five, for cutting timber on township two, range twenty-seven, N. W., tried yesterday.

And now, at this day comes the parties aforesaid, that is to say, U. States, by C. C. Yonge, district attorney; and the said defendant, in his own proper person and by attorney: and thereupon the said C. C. Yonge, on behalf of the United States, moves for judgment and sentence upon the verdict of the jury heretofore rendered in this case. And

no sufficient cause against the same being alleged or shown by the defendant, it is ordered and considered by the court, that the said Joseph Forsyth be imprisoned one day; and further, that he do pay to the U. States a fine of two hundred and fifty dollars, and also the cost of this prosecution, taxed at two hundred ninety-nine dollars twenty-seven cents; and for this he be taken, &c.

And afterwards, to wit, on the same day of *of* March, eighteen hundred and forty-eight, in open court, the same Joseph Forsyth prays an appeal from this decision, judgment, and sentence of the court in this case, to the Supreme Court of the United States, and it is entered accordingly.

UNITED STATES OF AMERICA,
Northern district of Florida.

In obedience to the commands in the writ of error hereto annexed, I, C. N. Jordan, clerk of the district court of the United States for the northern district of Florida, do hereby certify, that the foregoing is a true transcript and copy of the record and proceeding in a certain indictment lately pending in the said district court, wherein the United States are plaintiffs, and the said Joseph Forsyth is defendant, in the said writ of error mentioned.

In witness whereof I hereunto set my hand, and affix the seal of said district court, at the city of Pensacola, this 6th day of April, [L. S.] in the year of our Lord eighteen hundred and forty-eight, and independence of the United States 72.

C. N. JORDAN, *Clerk*.

Filed 4th December, 1848.